

**REMARKS**

**I. Status of the Application**

Claims 1-14 have been examined and have rejected on prior art grounds. By this Amendment, claim 3 has been canceled without prejudice or disclaimer. Thus, upon entry of the present Amendment, claims 1-2 and 4-14 will be all the claims pending in the present application. Applicant submits that the amendments should be entered as a matter of course. The inclusion of claim 3 into claim 1 does not raise any new issues in need of further consideration. The remaining amendments merely relate to issues of form. Even if the amendments are not entered, the arguments set forth below remain pertinent to the patentability of the claims.

**II. Claim Rejection under 35 U.S.C. § 103(a) over Applicant Admitted Prior Art (“AAPA”) in view of U.S. Patent No. 5,917,488 to Anderson et al. (“Anderson”)**

Claims 1-3 and 5-14 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over AAPA in view of Anderson. Applicant respectfully traverses the rejection as follows.

**A. Claims 1 and 11-12**

Claim 1 recites,

image acquisition means for obtaining image data sets;  
classification selection means for carrying out classification  
and/or selection on the image data sets; and  
media recording means for recording the image data sets  
that have been subjected to the classification and/or the selection in  
a portable recording medium.

Applicant submits that Anderson fails to teach the claimed sequence of obtaining image data sets, carrying out classification and/or selection on the image data sets, and recording the image data sets that have been subjected to the classification and/or selection in a portable recording medium. For example, the device in Anderson examines an image data set source and generates a viewer list. The viewer list is made up of viewer list elements, each of which comprises a first data field for storing a thumbnail, a second data field for storing a reference to actual data corresponding to an image or a set of images, and a third data field for storing a reference to a next viewer list element. *See* Anderson at col. 3, lines 29-38. However, this comprises a double counting of elements. The Examiner contends that the distinction between still images, natural groups and programmed groups taught by Anderson corresponds to the claimed classification and/or selection of the image data sets. The Examiner further contends that the image data sets are recorded in a memory. *See* Office Action at page 8. However, Anderson merely teaches that data fields for storing a thumbnail, a reference or link to actual image data, and a reference or link to another viewer list element are created when an image data set is obtained from a source. Even assuming *arguendo* that the image data sets are classified into still images, natural groups and programmed groups, the classified image data sets are not then stored to a recording medium, according to Anderson. Rather, Anderson teaches that the link between the thumbnail and the corresponding image data is stored, along with the link between one thumbnail and another thumbnail.

In other words, Anderson teaches that when an image data set is obtained from a source, thumbnails and links between the images are generated. These links and thumbnails are then

stored to a memory on a computer. When a user clicks on a thumbnail, the stored links allow the user to access the associated image data or access another link. However, Anderson fails to teach that the image data sets are classified and/or selected, and then the image data sets themselves are recorded in a portable recording medium. On the other hand, Anderson merely teaches that links between images are generated and recorded on a memory. The Examiner appears to be relying on the alleged “classification” taught by Anderson as corresponding to both the claimed classification and/or selection and the claimed recording. This amounts to an impermissible double-counting of elements since the Examiner is essentially using the viewer list links to comprise both the classification and the recording to the portable medium. The single creation the viewer list cannot teach both aspects.

Therefore, Applicant submits that Anderson fails to teach that the image data sets that have been subjected to the classification and/or the selection are recorded in a portable recording medium.

Furthermore, the subject matter of claim 3, which has been incorporated into claim 1 by the present Amendment, describes an apparatus that carries out classification by analyzing at least one of the following characteristics: colors of images represented by the image data sets, density distribution therein, and a shape of a subject therein. In the Amendment filed October 1, 2007, Applicant argued that Anderson merely teaches grouping image data based on temporal, spatial, or some physical relationship, or by a user-defined criterion. Applicant further argued that this teaching of Anderson fails to provide a reason why one of ordinary skill in the art would classify image data based on the criteria described in claim 3. In response, the Examiner

maintains that it would have been obvious to one of ordinary skill in the art to combine the teachings of Anderson with AAPA because Anderson teaches a user friendly method for displaying and manipulating image data sets thereby organizing thumbnails and organizing data sets.

However, regardless of whether it would have been obvious to combine the teachings of Anderson and AAPA, neither reference teaches the classifying of data sets according to the scene characteristics described in currently amended claim 1. Anderson relates to a method of displaying and manipulating data sets. *See* Anderson at col. 4, lines 56-58. To this end, the method of Anderson graphically displays image data sets. *See* col. 7, lines 56-65. When a user selects a data set, an appropriate application is executed to allow the user to view and edit the image data. *See* Anderson at col. 8, lines 35-49. Thus, the user is able to view the image, but would have to manually classify data sets according to the criteria listed in claim 1. There is no teaching or suggestion by Anderson or AAPA to classify the image data sets by the characteristics of claim 1.

Therefore, Applicant submits that the grouping of image data based on temporal or spatial relationships fails to teach or suggest classifying data image data sets according to colors of images, density distribution of images, and shape of a subject in the images. Accordingly, Applicant would submit that claim 1 is patentable over Anderson and AAPA for at least the foregoing reasons. Since claims 11 and 12 contain features similar to those discussed above in conjunction with claim 1, Applicant submits that claims 11 and 12 are patentable over Anderson and AAPA for reasons analogous to those set forth for claim 1.

**B. Claims 2, 3, 5 and 7**

Since claims 2, 3 and 7 are dependent upon claim 1, Applicant submits that such claims are patentable over Anderson and AAPA at least by virtue of their dependency. Since claim 3 has been canceled without prejudice or disclaimer, Applicant submits that the rejection of such claim is now moot.

**C. Claim 6**

Claim 6 recites, “wherein the classification selection means carries out the selection first in the case where the classification and the selection are carried out.” The Examiner maintains that Anderson teaches that the user selects a thumbnail after the programmed groups are created, and a new data set is created within the programmed group. *See* Office Action at page 13. However, Anderson merely teaches that programmed groups that are classified according to user-defined criteria may be nested, such that selecting a programmed group generates another viewer list containing viewer list elements for each image data set (which may contain other programmed groups) in the programmed group. *See* Anderson at col. 9, lines 8-36; Figure 9. In other words, programmed groups may contain other programmed groups, however the nested programmed groups are previously classified. Once the programmed groups have been classified, Anderson merely teaches that a user can view the image data sets within a nested programmed group by selecting the thumbnail corresponding to that programmed group.

Therefore, Anderson fails to teach that the selection is carried out first in the case where classification and selection are carried out. Accordingly, Applicant submits that claim 6 is

patentable over Anderson and AAPA for at least the foregoing reason, as well as by virtue of its dependency upon claim 1.

**D. Claims 8 and 9**

Claim 8 recites, *inter alia*,

wherein the media recording means records the image data sets that have been subjected to the classification and/or the selection in the recording medium in a format that enables display of a slide show.

In the Amendment filed October 1, 2007, Applicant argued that Anderson does not teach recording the image data sets in the recording medium in a format that enables display of a slide show. Specifically, Applicant argued that elements 614(1)-(m) referred to by the Examiner, designate thumbnails corresponding to natural groups, so as to differentiate natural groups from a still group or programmed group. *See* Anderson at col. 8, lines 13-34.

In the present Office Action, the Examiner maintains the rejection by asserting that a slide show is defined as a display of a series of chosen images. However, even under the Examiner's definition of "slide show", elements 614(1)-(m) are not recorded in the recording medium in a format that enables display of a slide show. On the other hand, Anderson merely teaches that thumbnails 614(1)-(m) are displayed as a graphical representation. *See* Anderson at Figure 9; col. 9, lines 8-16.

Accordingly, Applicant submits that claim 8 is patentable over Anderson and AAPA for at least the foregoing reason. Since claim 9 is dependent upon claim 8, Applicant submits that it is patentable over Anderson and AAPA at least by virtue of its dependency.

**E. Claim 10**

Claim 10 recites “wherein the media recording means records in the recording medium the image data sets having been subjected to the classification and/or the selection in a manner that enables printing thereof.” Anderson fails to teach that the image data sets are recorded in a recording means in a manner that enables printing of the image data sets. In fact, Anderson teaches that image data sets are displayed in a viewer list that contains thumbnails for each element of the viewer list. *See* Anderson at col. 3, lines 39-43.

Moreover, the thumbnail image may not have any relation to the image data contained in the group associated with the thumbnail. Specifically, the thumbnail image may be only the first image of the group, or may be based on user selected data. *See* Anderson at col. 3, lines 52-56. Regardless, the thumbnail images of Anderson are not recorded in a manner that enables printing. The thumbnail images are simply small images that may or may not be related to the images stored. Therefore, printing the thumbnail images would be useless to the user who is attempting to print the images of the image data set. Accordingly, Applicant submits that claim 10 is patentable over Anderson and AAPA for at least the foregoing reasons, as well as by virtue of its dependency upon claim 1.

**F. Claims 13 and 14**

Since claims 13 and 14 are dependent upon claim 1, Applicant submits that such claims are patentable over Anderson at least by virtue of their dependency.

Additionally, claim 14 recites, “carrying out the further classification and/or the further selection based on different criteria than the previously carried out classification and/or

selection.” As discussed above with regard to claim 7, the Examiner maintains that Anderson teaches that the user selects a thumbnail after the programmed groups are created, and a new data set is created within the programmed group. However, there is no indication that the second classification and/or selection taught by Anderson is based upon different criteria from the first classification and/or selection. Therefore, Applicant submits that claim 14 is patentable over Anderson and AAPA for at least this additional reason.

**III. Claim Rejection under 35 U.S.C. § 103(a) over AAPA in view of Anderson, in further view of U.S. Patent No. 5,878,156 to Okumura, in further view of the Examiner’s Official Notice**

Claim 4 has been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over AAPA in view of Anderson, in further view of Okumura, in further view of the Examiner’s Official Notice.

In the Amendment filed October 1, 2007, Applicant argued that the device in Okumura teaches away from combining the teachings of Okumura, Anderson and the admitted prior art to achieve the claimed invention. Specifically, Applicant argued that the device of Okumura detects an image of a target person and subsequently processes the image to determine whether the person’s eyes are open or closed in a manner that would not work to accomplish the same result as the device recited in claim 4. *See* Okumura at col. 1, lines 8-16. For example, Applicant argued that the detection methods of Okumura would only work to determine if the eyes of one person who is sitting at a fixed distance and angle relative to the camera, such as in the driver seat of a vehicle, are closed.



In the present Office Action, the Examiner maintains the rejection by asserting that claim 4 only requires selecting images representing a person or persons whose eyes are not closed. In the previous amendment, Applicant simply pointed out to the Examiner that the teaching of Okumura is not applicable to the teachings of Anderson. For example, Okumura is directed to an apparatus for detecting whether a driver of a vehicle is sleeping. *See* Okumura at Abstract. Okumura has nothing to do with the classification or selection of images. The Examiner maintains that one of ordinary skill in the art would combine the teachings of Okumura with the teachings of Anderson because Okumura teaches a face image processing apparatus which can detect the open or closed state of an eye at higher precision. *See* Office Action at page 25. Applicant submits that one skilled in the art would not combine the creating of links between images taught by Anderson with the sleep detection apparatus taught by Okumura.

For example, Okumura teaches that the detection of whether a person's eye is open or closed is based upon measuring the distance between the center of the person's eyebrow and the center of the person's eye and comparing that distance to a reference threshold distance. *See* Okumura at Figures 9, 10A, and 10B, and col. 7, lines 43-67. One skilled in the art attempting to classify and/or select pictures based upon whether a subject in a picture blinked when the picture was taken, would not look to the teachings of Okumura, which determines whether a driver has fallen asleep at the wheel. An example of a reason as to why one skilled in the art would not look to the teachings of Okumura is that the apparatus of Okumura only detects whether the eyes of a single person who is sitting at a fixed distance and angle in relation to the camera, such as an automobile driver, are open. However, one skilled in the art of the present invention would want

to monitor the eyes of multiple persons placed at variable distances from the camera, and at various angles to the camera. Thus, the Examiner's proffered motivation to combine, to provide a higher precision of detection, is not well founded. Therefore, one of ordinary skill in the art attempting to classify pictures according to whether a subject's eyes are closed would not combine the teachings of Okumura with the teachings of Anderson. Accordingly, Applicant submits that claim 4 is patentable over the cited references for at least the foregoing reasons.

#### **IV. Conclusion**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

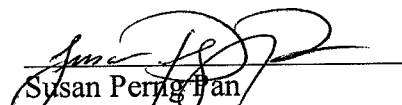
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